

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW MEXICO**

In re: BRIAN K. O'DELL,

No. 13-07-12257 ML

Debtor.

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CONNIFF CATTLE COMPANY, LLC and  
THE JOHN N. CONNIFF AND LAURA  
MATHERS CONNIFF REVOCABLE TRUST  
U/T/A DATED MAY 24, 1994,

Plaintiffs,

v.

Adversary No. 07-1182 M

BRIAN O'DELL,

Defendant.

**ORDER DENYING MOTION TO DISQUALIFY PLAINTIFFS'  
COUNSEL FROM REPRESENTING PLAINTIFFS  
BECAUSE OF CONFLICT OF INTEREST**

THIS MATTER is before the Court on the Motion to Disqualify Plaintiff's [sic.] Counsel from Representing Plaintiffs because of Conflict of Interest ("Motion") filed by Defendant Brian O'Dell, by and through his attorney, Ronald E. Holmes. Plaintiffs oppose the Motion, asserting among other things, that no attorney-client relationship ever existed between attorney Dana M. Kyle and Defendant which would prohibit the Miller Stratvert, P.A. law firm from representing Plaintiffs in this proceeding. The Court held a final hearing on the Motion on May 12, 2008.

Upon review of the Motion and the response thereto, and being otherwise sufficiently informed, the Court finds that there is no conflict of interest that would disqualify the Miller Stratvert, P.A. law firm from representing Plaintiffs. The Court will, therefore, deny the Motion.

It is undisputed that Dana Kyle, an attorney who works at Miller Stratvert, P.A. has represented Plaintiffs John Conniff and Laura Conniff in connection with a variety of matters, including the formation of O'Dell and Conniff Ranch, LLC, and that as part of the formation and funding of O'Dell and Conniff Ranch, LLC, Dana Kyle prepared two quitclaim deeds to transfer certain real property then titled in the names of Brian O'Dell and his former spouse, Alice O'Dell, to Brian O'Dell, individually, and then from Brian O'Dell to the O'Dell and Conniff Ranch, LLC. Dana Kyle prepared those quitclaim deeds at the direction of John Conniff and Laura Conniff. *See Affidavit of Dana Kyle*, ¶ 9. Deposition testimony of Defendant Brian O'Dell indicates that Defendant Brian O'Dell thought that Dana Kyle was John Conniff's attorney. *See Exhibit 2 attached to Plaintiff's Response to Motion to Disqualify*. There is no evidence that Defendant Brian O'Dell ever communicated any confidential information to Dana Kyle, or was ever billed by the Miller Stratvert, P.A. law firm for any legal work.<sup>1</sup> Thus there is insufficient evidence that an attorney-client relationship was ever formed between Defendant Brian O'Dell and Dana Kyle and/or the law firm of Miller Stratvert, P.A.

The Rules of Professional Conduct upon which Defendant bases his Motion are premised upon a current or former attorney-client relationship.<sup>2</sup> *See also Cole v. Ruidoso Mun. Sch.*, 43

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<sup>1</sup>*See Cole v. Ruidoso Mun. Sch.*, 43 F.3d 1373, 1384 (10<sup>th</sup> Cir. 1994)(a party seeking to disqualify counsel "must show that (1) it submitted confidential information to a lawyer and (2) it did so with the reasonable belief that the lawyer was acting as the party's attorney.")(citation omitted).

<sup>2</sup>*See* Rule 16-107 of the New Mexico Rules of Professional Conduct, which provides, in relevant part, that "[a] lawyer shall not represent a client if the representation of that client will be directly or substantially adverse to another client . . ."

Similarly, Rule 16-109 of the New Mexico Rules of Professional Conduct prohibits "[a] lawyer who has formerly represented a client in a matter . . ." from representing "another person

F.3d 1373 at 1384 (“The threshold question for the court [in considering whether there is an impermissible conflict under Rule 16-109] is whether there was an attorney-client relationship that would subject a lawyer to the ethical obligation of preserving confidential communications.”)(citations omitted). The Court finding no such relationship, the Motion must be denied.

WHEREFORE, IT IS HEREBY ORDERED that the Motion is DENIED.



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MARK B. McFEELEY  
United States Bankruptcy Judge

Date entered on docket: May 13, 2008

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in the same or a substantially related matter in which that person's interests are materially adverse to the interest of the former client unless the former client consents after consultation . . .”

N.M.S.Ct.R. 16-107 and 16-109.